IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 55 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BARODA ELECTRIC METERS LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 55 of 1989

MR MANISH K KAJI for Petitioner No. 1

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 16/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. Income-tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following question at the instance of the direction issued by this Court for the opinion of this Court under Section 256(2) of the Income-tax Act, 1961.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that interest u/s. 216 was rightly charged?"

#. The matter pertains to the Assessment Year 1982-83 in respect of which the assessee had filed a Return on 29.6.82, declaring a total income of Rs. 30,41,556/-. Revised Return was filed by the assessee on 25.11.83, declaring an income of Rs. 28,95,923/-. The assessee Company had filed estimate in form no. 29 on 15.6.81 estimating its income at Rs. 21,06,000/- after claiming set-off in respect of business loss caused which was of Rs. 3,94,000/-. Advance tax payable was shown as Rs. 11,87,257/-. The assessee Company ought to have paid the tax in the installment of Rs. 3,95,752 as per the estimate filed but it paid Rs. 3,76,961/- on 28.8.81 and Rs. 3,76,961/- on 4.11.81. In the revised estimate filed under Section 212(3A) filed on 15.12.81, the income was estimated at Rs. 31,00,000/- and the advance tax payable was shown to be Rs. 17,90,250/-. The last installment of Rs. 10,36,328/- was paid by the assessee on 19.12.81. The assessee was, therefore, called upon to explain as to why interest under Section 216 should not be charged for underestimating advance tax payable in the first two installments. The assessee replied to the show cause on 29.9.84, inter alia, contending that due to diverse factors it was impossible for an industry like the one of this Company, to estimate the income at a correct figure. The Income-tax Officer did not find any substance in the explanation of the assessee and rejected the same by holding that the assessee had not produced any evidence to show that in the earlier quarters its sales were less and that the sales had shot up in the subsequent quarter. It was held that the assessee failed to prove with the help of any figures regarding sales, purchase etc. that the estimate filed on 15.6.81 was based on any reasonable data. Interest was, therefore, ordered to be charged under Section 216 of the Act.

#. It is evident from the order of the Income-tax Officer that after issuance of the show cause notice to the assessee and taking into consideration their reply,

the Income-tax Officer came to a finding that the assessee had underestimated the income in the first two quarters without there being any reasonable ground. The appellate authority confirmed the said order of the Income-tax Officer.

#. The only contention that was raised on behalf of the assessee before us was that in view of the decision of this Court in C.I.T. Vs. Nagri Mills Ltd. reported in 166 ITR 292, interest cannot be levied under Section 216 of the Income-tax Act unless the Income-tax Officer finds that the assessee had underestimated the advance tax payable by it.

#. It is clear from the order of the Income-tax Officer that copious reasons are given by the Income-tax Officer for holding that the interest was leviable under Section 216 of the Income-tax Act on the ground that the assessee had underestimated advance tax payable by it and had not given any satisfactory explanation for underestimating advance tax payable by it. In this view of the matter, we are of the opinion that the Tribunal was right in holding that the interest under Section 216 was rightly charged. The question referred to us is, therefore, answered in affirmative against the assessee and in favour of the Revenue. The Reference stands disposed of accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]
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